

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1286

Introduced by Bromm, 23; Byars, 30; Hudkins, 21; Jones, 43

Read first time January 23, 2002

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to telecommunications; to amend sections
2 86-802, 86-1303, and 86-1305, Reissue Revised Statutes of
3 Nebraska, sections 75-134 and 75-156, Revised Statutes
4 Supplement, 2000, and sections 75-132.01, 86-804, 86-808,
5 86-1405, and 86-2204, Revised Statutes Supplement, 2001;
6 to authorize regulation of wireless carriers as
7 prescribed; to provide powers and duties; to define and
8 redefine terms; to harmonize provisions; to provide an
9 operative date; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The commission shall regulate wireless
2 carriers as provided in this section and sections 2 and 3 of this
3 act.

4 (2) The commission shall exercise regulatory authority
5 over billing practices of wireless carriers and shall investigate
6 and resolve complaints concerning billing practices, billing
7 disputes, and subscriber deposits and credits. The regulatory
8 authority shall include collection and billing practices related to
9 surcharges authorized under the Nebraska Telecommunications
10 Universal Service Fund Act, the Telecommunications Relay System
11 Act, and sections 86-2201 to 86-2214. If a complaint cannot be
12 resolved informally, the commission shall, upon petition by a
13 subscriber, hold a hearing pursuant to commission rule and
14 regulation. Based on the evidence presented to the commission at
15 the hearing, the commission may by order render its decision
16 granting or denying in whole or in part the subscriber's petition
17 or provide such other relief as is reasonable. The commission may
18 enforce any such order against any wireless carrier as provided in
19 sections 75-140 to 75-144 and may be appealed. The appeal shall be
20 in accordance with the Administrative Procedure Act.

21 (3) In addition to regulating billing practices, the
22 commission shall also regulate as provided in section 86-1405 both
23 the service quality and the customer service provided by wireless
24 carriers which are eligible telecommunications companies receiving
25 funds pursuant to the Nebraska Telecommunications Universal Service
26 Fund Act.

27 Sec. 2. (1) A wireless carrier providing
28 telecommunications service in Nebraska shall file a registration

1 form with and pay a registration fee to the commission. A wireless
2 carrier which provided such telecommunications service prior to
3 January 1, 2003, and which continues to provide such
4 telecommunications service on and after January 1, 2003, shall
5 register with the commission prior to April 1, 2003. Any wireless
6 carrier which begins to provide telecommunications service in
7 Nebraska on or after January 1, 2003, shall register with the
8 commission prior to providing such telecommunications service.

9 (2) The commission shall prescribe the registration form.
10 It shall include:

11 (a) The name, address, telephone number, and email
12 address of a contact person concerning the Nebraska
13 Telecommunications Universal Service Fund Act and related
14 surcharges, if applicable;

15 (b) The name, address, telephone number, and email
16 address of a contact person concerning the Telecommunications Relay
17 System Act and related surcharges, if applicable;

18 (c) The name, address, telephone number, and email
19 address of a contact person concerning sections 86-2201 to 86-2214
20 and related surcharges, if applicable; and

21 (d) The name, address, telephone number, and email
22 address of a contact person concerning consumer complaints and
23 inquiries.

24 (3) The wireless carrier shall submit a registration fee
25 with the registration form. The commission shall set the fee by
26 rule and regulation, but the fee shall not exceed fifty dollars.

27 (4) The wireless carrier shall keep the information
28 required by this section current and shall notify the commission of

1 any changes to such information within sixty days after the change.
2 The commission shall not assess a fee for any changes to
3 information made within the sixty-day period set forth in this
4 subsection.

5 Sec. 3. The commission may administratively fine
6 pursuant to section 75-156 any wireless carrier which violates
7 section 1 or 2 of this act.

8 Sec. 4. Section 75-132.01, Revised Statutes Supplement,
9 2001, is amended to read:

10 75-132.01. (1) Notwithstanding the provisions of section
11 75-131, the commission shall have exclusive original jurisdiction
12 over any action concerning a violation of any provision of (a)
13 section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810 by a
14 telecommunications company, (b) sections 1 to 3 of this act by a
15 wireless carrier, or (c) ~~or (b)~~ sections 86-2301 to 86-2307 by an
16 agency or political subdivision of the state.

17 (2) After all administrative remedies before the
18 commission have been exhausted, any interested party to an action
19 may appeal. The appeal shall be in accordance with the
20 Administrative Procedure Act.

21 (3) If the commission enters an order declining
22 jurisdiction under subsection (1) of this section, any interested
23 person may petition the district court of the county in which such
24 alleged violation has occurred. If it appears to the court, after
25 a hearing, that a provision of such sections has been violated, the
26 court may issue an injunction or other proper process to restrain
27 the telecommunications company and its directors, officers,
28 employees, or agents or the agency or political subdivision of the

1 state from continuing such violation and may order additional
2 relief. Any party to the case shall have the right to appeal the
3 decision of the district court to the Court of Appeals under the
4 rules provided by law for appeals in civil cases.

5 (4) For purposes of this section:

6 (a) Telecommunications ~~7 telecommunications~~ company has
7 the same meaning as in section 86-802; and

8 (b) Wireless carrier has the same meaning as in section
9 86-802.

10 Sec. 5. Section 75-134, Revised Statutes Supplement,
11 2000, is amended to read:

12 75-134. (1) A commission order entered after a hearing
13 shall be written and shall recite (a) a discussion of the facts of
14 a basic or underlying nature, (b) the ultimate facts, and (c) the
15 commission's reasoning or other authority relied upon by the
16 commission.

17 (2) Every order of the commission shall become effective
18 ten days after the date of the mailing of a copy of the order to
19 the parties of record except (a) when the commission prescribes a
20 later effective date, (b) as otherwise provided in section 75-121
21 or 75-139, (c) as otherwise provided for cease and desist orders
22 issued pursuant to section 75-133, or (d) for orders entered
23 pursuant to section 75-319 which shall be effective on the date of
24 entry.

25 (3) Except as otherwise provided in this section or for
26 rate orders provided for in section 75-139, if one of the parties
27 of record commences an appeal pursuant to section 75-137, the order
28 appealed shall be in abeyance until the Court of Appeals or Supreme

1 Court issues its mandate. Nothing in this section shall hold in
2 abeyance an order authorizing the issuance of a certificate or
3 permit, an order denying relief or authority, or an order entered
4 pursuant to section 75-319.

5 (4) If a party of record to a telecommunications order
6 commences an appeal in accordance with the Administrative Procedure
7 Act, the order appealed shall become effective on the date
8 prescribed in subsection (2) of this section and remain in effect
9 unless upon application (a) the commission or district court issues
10 an order staying the underlying commission order or (b) the
11 commission, district court, Court of Appeals, or Supreme Court
12 issues an order reversing or modifying the underlying commission
13 order. For purposes of this subsection, telecommunications order
14 means an order entered by the commission pursuant to the Intrastate
15 Pay-Per-Call Regulation Act, the Nebraska Telecommunications
16 Universal Service Fund Act, the Telecommunications Relay System
17 Act, subsection (2) of section 75-109, ~~or~~ sections 75-604 to
18 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to
19 86-1222, or sections 1 to 3 of this act.

20 (5) The commission or district court may only issue a
21 stay pursuant to subsection (4) of this section if it finds that
22 (a) the applicant for the stay is likely to prevail when the matter
23 is finally decided, (b) without relief, the applicant will suffer
24 irreparable injury, and (c) the grant of relief to the applicant
25 will not substantially harm other parties to the proceedings. The
26 commission or district court may require the party requesting such
27 stay to give bond in such amount and conditioned as the commission
28 or court may direct. The grant or denial of a stay shall not be

1 considered to be a final order.

2 Sec. 6. Section 75-156, Revised Statutes Supplement,
3 2000, is amended to read:

4 75-156. (1) In addition to other penalties and relief
5 provided by law, the Public Service Commission may, upon a finding
6 that the violation is proven by clear and convincing evidence,
7 assess a civil penalty of up to ten thousand dollars per day
8 against any person, motor carrier, regulated motor carrier, common
9 carrier, or contract carrier for each violation of (a) any
10 provision of sections 75-301 to 75-390 administered by the
11 commission or section 75-126 as such section applies to any person
12 or carrier specified in sections 75-301 to 75-390, (b) a commission
13 order entered pursuant to the Intrastate Pay-Per-Call Regulation
14 Act, the Nebraska Telecommunications Universal Service Fund Act,
15 the Telecommunications Relay System Act, subsection (2) of section
16 75-109, ~~or~~ sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to
17 86-1009, or 86-1201 to 86-1222, or sections 1 to 3 of this act, (c)
18 any term, condition, or limitation of any certificate or permit
19 issued by the commission pursuant to sections 75-301 to 75-390, or
20 (d) any rule, regulation, or order of the commission issued under
21 authority delegated to the commission pursuant to sections 75-301
22 to 75-390. The civil penalty assessed under this section shall not
23 exceed two million dollars per year for each violation. The amount
24 of the civil penalty assessed in each case shall be based on the
25 severity of the violation charged. The commission may compromise
26 or mitigate any penalty prior to hearing if all parties agree. In
27 determining the amount of the penalty, the commission shall
28 consider the appropriateness of the penalty in light of the gravity

1 of the violation and the good faith of the violator in attempting
2 to achieve compliance after notification of the violation is given.

3 (2) Upon notice and hearing in accordance with this
4 section and section 75-157, the commission may enter an order
5 assessing a civil penalty of up to one hundred dollars against any
6 person, firm, partnership, limited liability company, corporation,
7 cooperative, or association for failure to file an annual report as
8 required by section 75-116 and as prescribed by commission rules
9 and regulations. Each day during which the violation continues
10 after the commission has issued an order finding that a violation
11 has occurred constitutes a separate offense. Any party aggrieved
12 by an order of the commission under this section, except an order
13 assessing a civil penalty issued under subdivision (1)(b) of this
14 section, has the rights of appeal set forth in section 75-136.01.
15 For an order assessing a civil penalty issued under subdivision
16 (1)(b) of this section, any party aggrieved may appeal. The appeal
17 shall be in accordance with the Administrative Procedure Act.

18 (3) When any person or party is accused of any violation
19 listed in this section, the commission shall notify such person or
20 party in writing (a) setting forth the date, facts, and nature of
21 each act or omission upon which each charge of a violation is
22 based, (b) specifically identifying the particular statute,
23 certificate, permit, rule, regulation, or order purportedly
24 violated, (c) that a hearing will be held and the time, date, and
25 place of the hearing, (d) that in addition to the civil penalty,
26 the commission may enforce additional penalties and relief as
27 provided by law, and (e) that upon failure to pay any civil penalty
28 determined by the commission, the penalty may be collected by civil

1 action in the district court of Lancaster County.

2 Sec. 7. Section 86-802, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 86-802. For purposes of sections 75-109, 75-604, 75-609,
5 75-609.01, and 86-801 to 86-811 and sections 1 to 3 of this act,
6 unless the context otherwise requires:

7 (1) Basic local exchange rate means the flat monthly
8 charge for an access line, whether the service is provided on a
9 flat or measured basis, imposed by a telecommunications company for
10 basic local exchange service, but does not include any charges or
11 taxes imposed by or resulting from action by a governmental body
12 which are billed by a telecommunications company to its customers;

13 (2) Basic local exchange service means the access and
14 transmission of two-way switched voice communications within a
15 local exchange area;

16 (3) Business service means telecommunications service
17 which is used for occupational, professional, or institutional
18 purposes;

19 (4) Class of subscribers means a group of customers for
20 which a telecommunications company has established a distinct
21 pricing plan for telecommunications service;

22 (5) Commission means the Public Service Commission;

23 (6) Extended area service means a telecommunications
24 service which groups two or more exchanges to allow subscribers of
25 one exchange in the group to place and receive two-way switched
26 communications to and from subscribers in one or more other
27 exchanges in the group without an interexchange toll charge;

28 (7) Federal act means the federal Communications Act of

1 1934, as amended, including the federal Telecommunications Act of
2 1996, Public Law 104-104;

3 (8) Interexchange service means the access and
4 transmission of communications between two or more local exchange
5 areas, except for two-way switched communications between local
6 exchanges that are grouped for extended area service;

7 (9) Inter-LATA interexchange service means interexchange
8 service originating and terminating in different LATAs;

9 (10) Intra-LATA interexchange service means interexchange
10 service originating and terminating within the same LATA;

11 (11) LATA means local access transport area as defined by
12 applicable federal law, rules, or regulations;

13 (12) Local exchange area means a territorial unit
14 established by a telecommunications company for the administration
15 of telecommunications service within a specific area generally
16 encompassing a city, town, or village and its environs as described
17 in maps filed with and approved by the Public Service Commission;

18 (13) Residence service means telecommunications service
19 which is furnished to a dwelling and which is used for personal or
20 domestic purposes and not for business, professional, or
21 institutional purposes;

22 (14) Telecommunications means the transmission, between
23 or among points specified by the subscriber, of information of the
24 subscriber's choosing, without a change in the form or content of
25 the information as sent or received;

26 (15) Telecommunications common carrier means a provider
27 of telecommunications services for hire which offers its services
28 to the general public at large in Nebraska intrastate commerce;

1 (16) Telecommunications company means any person, firm,
2 partnership, limited liability company, corporation, association,
3 or governmental entity offering telecommunications service for a
4 fee in Nebraska intrastate commerce and does not include any
5 wireless carrier;

6 (17) Telecommunications contract carrier means a provider
7 of telecommunications services for hire, other than as a common
8 carrier, in Nebraska intrastate commerce; ~~and~~

9 (18) Telecommunications service means the offering of
10 telecommunications for a fee; and

11 (19) Wireless carrier means any person offering mobile
12 radio service, radio paging service, or wireless telecommunications
13 service for a fee in Nebraska intrastate commerce.

14 Sec. 8. Section 86-804, Revised Statutes Supplement,
15 2001, is amended to read:

16 86-804. The commission shall file with the Clerk of the
17 Legislature an annual report on or before September 30 of each year
18 on the status of the Nebraska telecommunications industry. The
19 report may be submitted in electronic format. The report shall
20 address: (1) The quality of telecommunications services being
21 provided to the citizens of Nebraska; (2) the availability of
22 diverse and affordable telecommunications services to all of the
23 people of Nebraska; (3) the level of telecommunications service
24 rates; (4) the Nebraska Telecommunications Universal Service Fund;
25 (5) the availability and location of 911 service and E-911 service
26 as required by section 86-1005; and (6) the availability and
27 location of wireless 911 service or enhanced wireless 911 service
28 as required by section 86-2205. The report also shall address the

1 question of the need for further legislation to achieve the
2 purposes of sections 86-801 to 86-811 and sections 1 to 3 of this
3 act.

4 Sec. 9. Section 86-808, Revised Statutes Supplement,
5 2001, is amended to read:

6 86-808. The commission shall not regulate ~~the following:~~

7 ~~(1) One-way~~ one-way broadcast or cable television
8 transmission of television or radio signals. ~~+~~ and

9 ~~(2) Mobile radio services, radio paging services, and~~
10 ~~wireless telecommunications service.~~

11 Sec. 10. Section 86-1303, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 86-1303. For purposes of the Telecommunications Relay
14 System Act:

15 (1) Commission ~~shall mean~~ means the Public Service
16 Commission;

17 (2) Deaf ~~shall have~~ has the same meaning as in section
18 71-4720.01;

19 (3) Fund ~~shall mean~~ means the Nebraska Telecommunications
20 Relay System Fund;

21 (4) Hard of hearing ~~shall have~~ has the same meaning as in
22 section 71-4720.01;

23 (5) Household ~~shall mean~~ means a family unit whose
24 members are related by birth, marriage, or adoption and who share a
25 common living arrangement;

26 (6) Personal telephone service ~~shall mean~~ means telephone
27 service located in an individual's room and the telephone service
28 account is in the individual's name;

1 (7) Specialized telecommunications equipment ~~shall mean~~
2 means any telecommunications device enabling deaf, hard of hearing,
3 or speech-impaired persons to communicate using conventional
4 telephone systems. Specialized telecommunications equipment ~~shall~~
5 ~~include~~ includes, but is not ~~be~~ limited to, telecommunications
6 devices for the deaf, signaling devices, and amplification devices;
7 ~~and~~

8 (8) Telecommunications company has the same meaning as in
9 section 86-1403;

10 (9) Telecommunications relay system ~~shall mean~~ means a
11 service permitting full and simultaneous communication between
12 deaf, hard of hearing, or speech-impaired persons using specialized
13 telecommunications equipment and other persons using conventional
14 telephone equipment; and

15 (10) Wireless carrier means any person offering mobile
16 radio service or wireless telecommunications service for a fee in
17 Nebraska intrastate commerce.

18 Sec. 11. Section 86-1305, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 86-1305. (1)(a) Each ~~telephone company in Nebraska~~
21 telecommunications company and wireless carrier shall collect from
22 ~~each of the telephone subscribers~~ subscriber a surcharge not to
23 exceed twenty cents per month on each telephone access line in
24 Nebraska. ~~including cellular telephone service.~~ The surcharge
25 shall only be collected on the first one hundred telephone access
26 lines per subscriber. The telecommunications companies and
27 wireless carriers shall add the surcharge to each subscriber's
28 local telephone bill.

1 (b) The ~~telephone~~ telecommunications companies and
2 wireless carriers shall not be liable for any surcharge not paid by
3 a subscriber and shall not be obligated to take legal action to
4 collect the surcharge.

5 (2) Before October 1 of each year, the commission shall
6 hold a public hearing to determine the amount of surcharge
7 necessary to carry out the Telecommunications Relay System Act.
8 After the hearing, the commission shall set the surcharge at the
9 level necessary to fund the statewide telecommunications relay
10 system and the specialized telecommunications equipment program for
11 the following year plus a reasonable reserve. The surcharge shall
12 become effective on January 1 following the change. The amount
13 appropriated for the specialized telecommunications equipment
14 program from the fund shall not exceed the revenue generated by one
15 cent of the surcharge per month.

16 (3) In an emergency the commission may adjust the amount
17 of the surcharge to become effective before such date but only
18 after a public hearing for such purpose.

19 (4) The proceeds from the surcharge shall be remitted to
20 the commission monthly no later than thirty days after the end of
21 the month in which they were collected together with forms provided
22 by the commission. The commission shall remit the funds to the
23 State Treasurer for credit to the fund.

24 (5) The commission may require an audit of any ~~telephone~~
25 telecommunications company or wireless carrier collecting the
26 surcharge pursuant to the act. In addition to any other provision
27 of law, the commission may regulate the billing practices of a
28 wireless carrier pursuant to sections 1 to 3 of this act.

1 Sec. 12. Section 86-1405, Revised Statutes Supplement,
2 2001, is amended to read:

3 86-1405. (1) The Nebraska Telecommunications Universal
4 Service Fund is hereby created. The fund shall provide the
5 assistance necessary to make universal access to telecommunications
6 services available to all persons in the state consistent with the
7 policies set forth in the Nebraska Telecommunications Universal
8 Service Fund Act. Only eligible telecommunications companies
9 designated by the commission shall be eligible to receive support
10 to serve high-cost areas from the fund. A telecommunications
11 company that receives such support shall use that support only for
12 the provision, maintenance, and upgrading of facilities and
13 services for which the support is intended. Any such support
14 should be explicit and sufficient to achieve the purpose of the
15 act.

16 (2) ~~Notwithstanding the provisions of section 86-808, the~~
17 ~~commission (a) shall~~ To the extent authorized by federal law, the
18 commission:

19 (a) Shall have authority and power to subject eligible
20 telecommunications companies to service quality, customer service,
21 and billing regulations. Such regulations shall apply only to
22 eligible telecommunications companies to the extent that such
23 eligible telecommunications companies are providing
24 telecommunications services or offerings which are eligible for
25 support by the fund;

26 (b) Shall have authority and power to issue orders
27 carrying out its responsibilities and to review the compliance of
28 any eligible telecommunications company receiving support for

1 continued compliance with any such orders or regulations adopted
2 pursuant to the act;

3 (c) May ~~and may~~ withhold all or a portion of the funds to
4 be distributed from any telecommunications company failing to
5 continue compliance with ~~its~~ the commission's orders or
6 regulations;

7 (d) Shall ~~and~~ ~~(b) shall consistent with the~~
8 ~~Telecommunications Act of 1996,~~ require every telecommunications
9 company to contribute to any universal service mechanism
10 established by the commission pursuant to state law. To determine
11 compliance, the commission may require an audit of any
12 telecommunications company concerning the collection and remittance
13 of a surcharge for universal service; and (e) may

14 (e) May administratively fine pursuant to section 75-156
15 any person who violates the Nebraska Telecommunications Universal
16 Service Fund Act.

17 (3) In addition to any other provision of law, the
18 commission may regulate the billing practice of a wireless carrier
19 pursuant to sections 1 to 3 of this act.

20 (4) Any money in the fund available for investment shall
21 be invested by the state investment officer pursuant to the
22 Nebraska Capital Expansion Act and the Nebraska State Funds
23 Investment Act.

24 Sec. 13. Section 86-2204, Revised Statutes Supplement,
25 2001, is amended to read:

26 86-2204. Each wireless carrier shall remit monthly to
27 the commission the amount of surcharge collected together with any
28 forms required by the commission no later than sixty days after the

1 last day of the month. The wireless carrier shall report the
2 number of wireless lines served and the number of wireless lines
3 from which it has collected surcharge revenue. The wireless
4 carrier shall maintain surcharge and remittance records for a
5 period of two years after the date of the subscriber's billing
6 statement. The commission shall remit the funds to the State
7 Treasurer for credit to the Enhanced Wireless 911 Fund. The
8 commission may at its own expense require an audit of any wireless
9 carrier's books and records concerning the collection and
10 remittance of the surcharge pursuant to sections 86-2201 to
11 86-2214. In addition to any other provision of law, the commission
12 may regulate the billing practices of a wireless carrier, as
13 defined in section 86-802, pursuant to sections 1 to 3 of this act.

14 Sec. 14. This act becomes operative on September 1,
15 2002.

16 Sec. 15. Original sections 86-802, 86-1303, and 86-1305,
17 Reissue Revised Statutes of Nebraska, sections 75-134 and 75-156,
18 Revised Statutes Supplement, 2000, and sections 75-132.01, 86-804,
19 86-808, 86-1405, and 86-2204, Revised Statutes Supplement, 2001,
20 are repealed.